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July 16, 1991

Lawrence M. Noble
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Noble:

AOR 1991-25

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The Pennsylvania Democratic State Committee and the Pennsylvania Republican State Committee jointly request an advisory opinion on the allocation of administrative expenses and costs of generic voter drives when a special election for federal office is necessitated by a vacancy in that office in an off-numbered year. In this instance, the vacancy was caused by the death of United States Senator John Heinz III.

Procedure for filling the vacancy for U.S. Senator

Prior to the death of Senator Heinz, Pennsylvanians would not be electing a Senator until the 1992 general election. The U.S. Constitution provides that "the executive authority...shall issue writs of election to fill such vacancies." It further allows the temporary appointment of a Senator if authorized by the State Legislature. 1/ Pennsylvania law allows the appointment of an interim Senator but mandates that "the vacancy shall be filled for the unexpired term by the vote of the electors of the State at a special election to be held at the time of the next general or municipal election, occurring at least ninety (90) days after the happening of the vacancy." The statute further states that "Candidates to fill vacancies... shall be nominated by political parties, in accordance with the party rules relating to the filling of

1/ United States Constitution. Amendment XVII, Paragraph
2

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

vacancies..." 2/ The next General Election in Pennsylvania will be held in November, 1991 to elect state-wide judges and for all local offices.

Pennsylvania Democratic State Committee Party Rule VIII, Section 1, provides that a vacancy "for any office to be voted for by the electors of the State at large... shall be filled by the State Committee which shall have

2/ 25 P.S. Sec. 2776. Special elections for United States Senator; nominations

Whenever a vacancy shall occur in the office of United States Senator, said vacancy shall be filled for the unexpired term by the vote of the electors of the State at a special election to be held at the time of the next general or municipal election, occurring at least ninety (90) days after the happening of such vacancy, and it shall be the duty of the Governor to issue writs of election to the various county boards of elections and to the Secretary of the Commonwealth within ten (10) days after the happening of said vacancy. Candidates to fill vacancies in the office of United States Senator shall be nominated by political parties, in accordance with the party rules relating to the filling of vacancies, by means of nomination certificates, in the form prescribed in section (2780 of this title); and by political bodies, by means of nomination papers in accordance with the provisions of sections (2911, 2912, and 2914 of this title). Said nomination certificates and nomination papers shall be filed in the office of the Secretary of the Commonwealth at least (60) days prior to the date of said special election. Until such time as said vacancy shall be filled by an election as herein provide, the Governor of the Commonwealth may make a temporary appointment to fill said vacancy.

authority to make and certify a nomination." 3/

Republican State Committee Rules state: "If a vacancy...shall occur...which is voted for by the electors...nomination to fill such vacancy shall be made by State Committee..." 4/

Questions Posed

The above fact situation raises the issue of how to allocate expenses between federal and non-federal accounts. Currently, expenses are allocated based on the number of candidates expected on the November, 1992 General Election ballot. What method of allocation should now be used? Once an allocation method has been declared, the next step is how to proceed. Most importantly, the question is when would the new allocation formula take effect. Until we are advised otherwise, we will continue to allocate under the formula based on the number of candidates expected on the 1992 General Election ballot.

3/ Pennsylvania Democratic State Committee Rules. Rule VIII. Vacancies.


SECTION 1. Any vacancy happening or existing in the Democratic nomination for any office to be voted for by the electors of the State at-large by reason of the death or withdrawal of a candidate, failure to nominate at the Primary Election, the calling of a special election, or other case, and which cannot be filled at a Primary Election under the law, shall be filled by the State Committee which shall have authority to make and certify a nomination.


4/ Pennsylvania Republican State Committee Rules. Rule 10.5. Vacancies for State-wide Offices Where Article IX(e) of the Election Code Applies.

If a vacancy for any cause shall occur in an elective office which is voted for by the electors of the state at large and the provisions of the Pennsylvania Election Code, Article IX(e) become operative, nomination to fill said vacancy shall be made by State Committee which shall have full authority to make and certify said nomination.

We respectfully request an expedited opinion on the above questions as soon as possible.

Sincerely,


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